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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,839	03/04/2004	Karl F. Popp	25734X	5294
20529	7590	02/23/2007		
NATH & ASSOCIATES 112 South West Street Alexandria, VA 22314			EXAMINER RAMACHANDRAN, UMAMAHESWARI	
			ART UNIT	PAPER NUMBER
			1617	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
31 DAYS	02/23/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/791,839

Applicant(s)

POPP, KARL F.

Examiner

Umamaheswari Ramachandran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-64 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-32, drawn to a method of treating rosacea in a patient comprising topically administering a mixture of antimicrobial agent and a pH modifier, classified in class 424, subclass 401, class 436, subclass 29, class 436, subclass 31, class 436, and subclass 32.
- II. Claims 33-48, drawn to a method of reducing or eliminating mite organisms that cause rosacea in a patient comprising topically administering a mixture of antimicrobial agent and a pH modifier, classified in class 424, subclass 401, class 436, subclass 29, class 436, subclass 31, class 436, and subclass 32.
- III. Claims 49-61, drawn to a method for treating rosacea in a patient having sensitive skin comprising topically administering to sensitive skin area, irritated skin areas, or inflamed skin areas of a patient in need thereof a storage-stable topical composition comprising a mixture of an active ingredient comprising an antimicrobial agent and a pH modifier, classified in class 424, subclass 401, class 436, subclass 29, class 436, subclass 31, class 436, and subclass 32.
- IV. Claims 62-64, drawn to a method for treating rosacea in a patient, comprising topically administering a mixture of antimicrobial agent and a pH modifier, and wherein said topical composition is administered with an

additional active agent effective to treat said rosacea, classified in class 424, subclass 401, class 436, subclass 29, class 436, subclass 31, class 436, and subclass 32.

The inventions are distinct from each other because of the following reasons:

Inventions of Groups I –IV are related as methods of treating rosacea in a patient, method of reducing or eliminating mite organisms that cause rosacea in a patient, a method for treating rosacea in a patient having sensitive skin comprising topically administering to sensitive skin area, irritated skin areas, or inflamed skin areas, method for treating rosacea in a patient administering an antimicrobial agent along with an additional agent.

The searches of Groups I, II, III and IV may be overlapping but there is no reason to believe that the searches would be co-extensive. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, the search required for Group III is not required for Group IV, restriction for examination purposes as indicated is proper. Also, the search required for Groups I and II is not required for Group III or Group IV, restriction for examination purposes as indicated is proper. In searching Group II, the examiner will be focusing on the method of reducing or eliminating mite organisms that cause rosacea whereas in searching group III examiner will be focusing on a method for treating rosacea in a patient having sensitive skin comprising topically administering to sensitive skin area, irritated skin areas, or inflamed skin areas and the examiner will be focusing on antimicrobial agent, a pH modifier and an additional agent. The search for all inventions would place an

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undue burden on the Office in view of the corresponding diversity in the field of search for each.

The application contains claims directed to patentably distinct species of the claimed invention. If Applicant elects Group I Applicant is required to elect a species of an antimicrobial agent, a species of a conditioning agent, and a species of mite organism. If Applicant elects Group II or Group III, Applicant is required to elect a species of an antimicrobial agent, and a species of mite organism. If Applicant elects Group IV, Applicant is required to elect a species of an antimicrobial agent, and a species of an additional agent.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C 103(a) of the other invention.

### ***Election***

A telephone call to the attorney is not required where 1) the restriction requirement is complex, 2) the application is being prosecuted pro se, or 3) the examiner knows from past experience that a telephone election will not be made (MPEP § 812.01). Therefore, since the examiner knows from past experience that written restriction is preferred, a telephone election was not made.

### ***Conclusion***

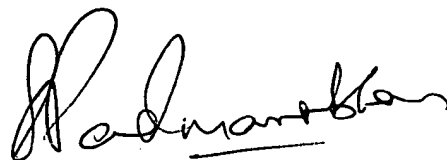
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umamaheswari Ramachandran whose telephone number is 571-272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER